

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re Standard Automotive ERISA Litigation

)
) MDL Docket No.
)

**MOTION OF DEFENDANTS ANTHONY L. SCIALABBA AND
ANTHONY L. SCIALABBA & ASSOCIATES, P.C. AND MORTON C.
BATT TO TRANSFER AND CONSOLIDATE
PURSUANT TO 28 U.S.C. §1407**

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Defendants Anthony L. Scialabba (“Scialabba”) and Anthony L. Scialabba & Associates, P.C. and Morton C. Batt (“Batt”) hereby move pursuant to 28 U.S.C. s. 1407 to transfer either of two related proceedings pending in different Districts (Massachusetts and New Jersey) to the other District for coordinated or consolidated pretrial proceedings.¹ While the movants respectfully suggest that consolidation in New Jersey would best achieve the objectives of the Multidistrict Litigation statute, their overriding concern is having to face substantively identical proceedings in different Districts, and they have no objection to consolidation in Massachusetts.² The Movants have submitted herewith a supporting brief.

The movants understand that the remaining defendants agree that Section 1407 relief is appropriate. Citistreet, LLC, a defendant in the Massachusetts proceeding and third-party defendant in the New Jersey proceeding, agrees that such relief is appropriate, but it takes no position as to whether consolidation is preferable in New Jersey as opposed to Massachusetts. John E. Elliott, II, a defendant in the New Jersey proceeding, also agrees that consolidation is appropriate but contends that consolidation should occur only in New Jersey.

¹

In accordance with J.P.M.L. Rule 7.2(a)(ii), a Schedule of Actions appears at Tab A to the accompanying Appendix of Exhibits to Motion to Transfer and Consolidate. Copies of the Complaints in the respective actions are included in the Appendix at Tab B (Massachusetts) and Tab C (New Jersey).

²

Defendants reserve the right to later seek consolidation in the transferee District for all purposes, including trial.

The relief sought should be granted because: (1) both actions involve the Standard Automotive 401(k) Plan and allegations of breaches of fiduciary duty and related claims under the Employee Retirement Security Act of 1974, as amended (“ERISA”), against current plan trustee Batt, former plan trustee Scialabba, and third-party retirement plan service provider Citistreet, LLC; (2) both actions involve common issues of fact and the desired remedy of restitution; (3) transfer and consolidation would serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation; and (4) transfer and consolidation would eliminate the potential for needlessly duplicative discovery and potentially inconsistent pretrial rulings.

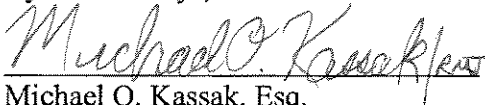
For the reasons set forth above and in the accompanying brief, the movants respectfully request an Order transferring the Massachusetts action to New Jersey for pretrial consolidation and coordination with the New Jersey action. Alternatively, the movants request an Order transferring the New Jersey action to

Massachusetts for pretrial consolidation and coordination with the Massachusetts action. The movants request such other relief the Panel deems just, proper, and equitable.

MORTON C. BATT

**ANTHONY L. SCIALABBA,
and ANTHONY L. SCIALABBA
& ASSOCIATES, P.C.**

By his attorneys,

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Dated: December 21, 2005

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